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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TIMOTHY B.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES
et al.,

Real Parties in Interest.

B179912

(Los Angeles County
Super. Ct. No. CK 46849)

ORIGINAL PROCEEDING. Writ petition pursuant to rule 38.1 of the
California Rules of Court. S. Patricia Spear, Judge. Petition denied.

Frank E. Ostrov for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County
Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Real Party in Interest
Los Angeles County Department of Children and Family Services.

Law Offices of Kenneth P. Sherman and Laura Dreskin for the Minors.

Timothy B. is the father of S.B. and S.B, one-year-old twins (one boy and one girl), who were declared dependents of the juvenile court. After a contested disposition hearing, the juvenile court found by clear and convincing evidence that providing reunification services to father--who had recently been sentenced to a prison term of two years and eight months--would be detrimental to the children. It therefore denied reunification services to father pursuant to Welfare and Institutions Code section 361.5, subdivision (e)(1).¹

Father filed a writ petition under rule 38.1 of the California Rules of Court, claiming the juvenile court violated his right to due process by denying him reunification services. Both the Los Angeles County Department of Children and Family Services (Department) and the children oppose the granting of relief.

We reject father's contention. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In late August 2004, a Department social worker responded to an emergency referral alleging that the then 11-month-old twins were the victims of general neglect and emotional abuse by their parents.² The social worker, accompanied by two police officers, found the twins at home with a babysitter. The babysitter stated that she did not know the whereabouts of the twins' mother and that father had recently been incarcerated for battery against mother.³ The babysitter claimed that both parents have substance abuse issues and that the twins had been exposed to ongoing domestic violence between the parents.

¹ All undesignated statutory references are to the Welfare and Institutions Code.

² Prior to this referral, the Department had received approximately 11 referrals regarding the family.

³ The twins' mother, T.R., is not a party to this writ proceeding. She and father are not married.

The Department detained the twins, placed them in foster care, and filed a dependency petition on their behalf. The petition alleged the children were at risk because of the parents' domestic violence (including violence in the children's presence), the parents' history and current use of drugs, and the parents' drug-related criminal activity.⁴

According to a police report that was attached to the detention report, two days before the twins were detained, mother fled to the police station and complained that father had beaten her. Mother told police that when she returned home earlier that day, father accused her of being with other men. He told her he was going to beat her up and told her to put down the twins she was holding at the time. After mother complied, father poured beer all over her, telling her nobody would believe her if she complained because she smelled of alcohol. Father then choked mother, punched her in the rib cage several times, knocked her to the ground and began kicking her.

Police observed finger scratch marks on the side of mother's neck, which were consistent with her allegation that father had choked her. Police also observed a scratch to mother's eyebrow. Mother also complained of pain to the side of her rib cage and to her ankle.

Mother told police that father had beaten her approximately 50 times in the past. She had never complained to police because father had threatened to kill her and bury her in Agua Dulce if she went to the police. Mother claimed that on one occasion, father beat her and dumped her body on the side of the road, where he left her for dead. Mother was found and was transported to the hospital.

⁴ The petition also alleged that mother had failed to reunify with another of her children, who was later adopted by mother's parents. The twins' father is not the father of this child, and the child is not the subject of this writ proceeding.

According to mother, father told her he is a parolee and gang member who could have her killed by gang members.

Father denied striking mother. He claimed she had poured beer on him and began scratching him. He did not know how she received her injuries.

Police arrested father on suspicion of corporal injury on a cohabitant. (Pen. Code, § 273.5.)

Police also interviewed the babysitter and her 20-year-old son, both of whom were at the home when father attacked mother. They reported that father had stated repeatedly during the day that he was going to “beat [mother’s] ass.” When the fighting started, the two witnesses took the twins into the rear bedroom.

According to the police report, father was on parole for narcotics, was on summary probation for battery on a peace officer, and had spent time in prison for possession of a controlled substance.

At a September 1, 2004 detention hearing, the juvenile court found a prima facie case had been made for detaining the twins. The court directed the Department to provide the parents with reunification services, and it scheduled an adjudication for the end of the month.

In late September 2004, the Department reported that father was again incarcerated after having being arrested on two occasions that month--once for possession, sale or manufacture of a dangerous weapon, and once for possession of drug paraphernalia. According to the report, a criminal background check revealed that father had several felony drug convictions dating back to 1992, as well as convictions for forgery and prison escape without the use of force. The background check also reflected several parole violations and numerous additional arrests with unknown dispositions.

The report also contained information obtained from various recent interviews. Mother reported that father began beating her when he was released

from prison in August 2003. She claimed he beat her regularly. Mother also claimed father would yell at the kids.

Father admitted having a drug problem. However, he denied hitting mother, instead portraying himself as the victim.

The babysitter--who had recently become mother's roommate--reported that father possessed a hand made gun and had threatened to kill both her and mother. The babysitter claimed she saw father physically abusing mother "every day." The babysitter also reported that father would yell at the kids, telling them to "shut the [f]uck up." She claimed father would yell at the female twin, "'Shut the fuck up, you're just like your fucking mother you cunt.'" The babysitter claimed father would pick the girl up by her shirt, place her in her crib, turn the television volume up "full blast," and shut the door.

The babysitter's 20-year-old son also reported that he saw father beat up mother and yell at the kids.

The Department recommended that father receive six months of reunification services.

The adjudication was continued from September to November 2004. In November, the Department provided the juvenile court with information reflecting that father had recently pled no contest to one count of unlawful possession of a firearm, one count of corporal injury on a cohabitant, and one count of vandalism, and he was sentenced to two years and eight months in prison. In light of this sentence, the Department recommended that, under section 361.5, subdivision (e)(1), no reunification services be offered to father, and that the court set a hearing for the selection and implementation of a permanent plan for the children.⁵ The Department also advised the court that the children's foster parents want to adopt them.

⁵ Section 361.5, subdivision (e)(1), provides in pertinent part: "If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable

On November 10, 2004, the juvenile court sustained the dependency petition. The court scheduled a contested disposition for the following month.

No witnesses were called at the disposition hearing. Counsel for the Department asked the court to deny father reunification services pursuant to section 361.5, subd. (e)(1). Counsel for the children joined in the request. Counsel for the mother stated that mother is very fearful of father and wants the children to be adopted.

Counsel for father argued the court should award father reunification services. Counsel claimed that whether father did “bad things” was “not the issue” because courts routinely provide reunification services to parents who do bad things. At the same time, counsel acknowledged that the nature of the parent’s conduct is a factor the court may consider. Counsel also noted that father was willing to participate in domestic violence and drug counseling and parenting classes while in prison.

After hearing argument, the juvenile court found by clear and convincing evidence that providing father with reunification services would be detrimental to the children. The court noted that the children were extremely young. The court also observed that father will not be out of prison by the time of the six-month review period.⁶ The court also cited the “overwhelming” evidence that father was guilty of considerable domestic violence, including instances where he beat mother while the children were in the home. Notwithstanding this evidence, father was in “total denial” and refused to take any responsibility for his actions.

services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.”

⁶ Under section 361.5, subdivision (a)(2), when a child less than three years old is detained, reunification services may not exceed a period of six months.

After denying mother reunification services pursuant to section 361.5, subdivision (b)(11), the court scheduled a hearing for the selection and implementation of a permanent plan for the children.⁷ (§ 366.26.)

Father filed a writ petition challenging the juvenile court's order. The Department filed an answer opposing the granting of relief. The children filed a joinder to the Department's answer.

DISCUSSION

In his petition, father raises a single argument, namely, that his right to due process was violated when the juvenile court denied him reunification services, apparently because “[t]he premise upon which the [juvenile court] denied the petitioner reunification services is not applicable”

Father does not explain why “the premise” is not applicable. As father acknowledges in his petition, the court denied reunification services pursuant to section 361.5, subdivision (e)(1) which, provides that a court may deny reunification services to an incarcerated parent if it “determines, by clear and convincing evidence, those services would be detrimental to the child.” As father is incarcerated, “the premise” upon which the juvenile court made its finding is clearly applicable.

Although we are not required to do so, we construe father's argument as a challenge to the sufficiency of the juvenile court's finding that providing reunification services would be detrimental to the children.

When we consider whether substantial evidence supports a juvenile court finding of fact, we must determine only whether there is reasonable, credible

⁷ Under section 361.5, subdivision (b)(11), reunification services need not be provided when the court finds by clear and convincing evidence that “the parental rights of a parent over any sibling of the child had been permanently severed . . . and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling of that child from the parent.”

evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470.) In so doing, we must resolve all conflicts in support of the court's determination and indulge all legitimate inferences to uphold the court's order. If substantial evidence exists, we must affirm the court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

The statute under which the juvenile court denied reunification services provides in pertinent part: "In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . , the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a)."⁸ (§ 361.5, subd. (e)(1).)

In this case, there was more than enough evidence to support the juvenile court's finding that providing father with reunification services would be detrimental to the children. As the juvenile court noted, the children are very young. At their tender age, they require stability and parental figures with whom they can bond. Father is not in a position to provide these. Moreover, because father has been sentenced to a prison term of two years and eight months, he will not be in a position to bond in any meaningful way with his children for quite some time. Indeed, as the juvenile court noted, if reunification services were ordered, father would still be incarcerated when the six-month review hearing

⁸ As noted above, under subdivision (a)(2), when a child less than three years old is detained, reunification services may not exceed a period of six months.

would have to take place. In addition, based on the evidence in the record, it does not appear there has been much, if any, bonding between father and the children. Finally, considering the extensive evidence of domestic abuse by father--for which he continues to deny responsibility--as well as his criminal record and drug history, it is hard to come to any conclusion other than the one reached by the juvenile court.

DISPOSITION

The petition is denied on the merits. This opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(b)(3).)

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FLIER, J.

We concur:

COOPER, P.J.

RUBIN, J.